

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HASSAN ALAA IBRAHIM
ALMANDIL,

Plaintiff,

v.

DAVID M. RADEL, Los Angeles
Asylum Office, Acting Director,
U.S. Citizenship, et al.,

Defendants.

Case No.: 15cv2166 BTM (BGS)

**ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS**

Currently before the Court is Defendants' motion to dismiss Plaintiff's Complaint. (ECF No. 3.) Plaintiff did not file an opposition to Defendants' motion. For the reasons discussed below, Defendants' motion is **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiff Hassan Alaa Ibrahim Almandil ("Almandil") is a native and citizen of Iraq who entered the United States as a B-2 visitor in December 2014. (Compl., ECF No. 1, ¶ 5.) On March 4, 2015, Almandil filed an application for asylum with the Department of Homeland Security, pursuant to Form I-589. (Compl. ¶ 6.) Almandil provided biometrics on March 15, 2015, but has yet to be scheduled for

1 an interview or receive adjudication on his application. (Compl. ¶¶ 7, 9.)

2 Almandil filed his Complaint on September 28, 2015, seeking an order of
3 mandamus from this Court directing Defendants to process his application. The
4 Complaint alleges violations of the Administrative Procedures Act, 5 U.S.C. §
5 701, et seq., for unlawful and unreasonable delay in processing Almandil's
6 application and for failing to carry out Defendants' adjudicative and administrative
7 functions. Defendants filed a motion to dismiss on December 1, 2015, arguing
8 that Almandil's claims fail both under the Administrative Procedures Act and the
9 Mandamus Act.

10 11 **II. DISCUSSION**

12 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should
13 be granted only where a plaintiff's complaint lacks a "cognizable legal theory" or
14 sufficient facts to support a cognizable legal theory. Balistreri v. Pacifica Police
15 Dept., 901 F.2d 696, 699 (9th Cir. 1988). When reviewing a motion to dismiss,
16 the allegations of material fact in plaintiff's complaint are taken as true and
17 construed in the light most favorable to the plaintiff. See Parks Sch. of Bus., Inc.
18 v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).

19 Although detailed factual allegations are not required, factual allegations
20 "must be enough to raise a right to relief above the speculative level." Bell
21 Atlantic v. Twombly, 550 U.S. 544, 555 (2007). "A plaintiff's obligation to prove
22 the 'grounds' of his 'entitle[ment] to relief' requires more than labels and
23 conclusions, and a formulaic recitation of the elements of a cause of action will
24 not do." Id. "[W]here the well-pleaded facts do not permit the court to infer more
25 than the mere possibility of misconduct, the complaint has alleged - but it has not
26 show[n] that the pleader is entitled to relief." Ashcroft v. Iqbal, 565 U.S. 662, 679
27 (2009) (internal quotation marks omitted). Only a complaint that states a
28 plausible claim for relief will survive a motion to dismiss. Id.

Almandil's Complaint requests "relief in the nature of mandamus." (Compl. p. 1). Although Almandil never specifically mentions the Mandamus Act, Defendants posit that Almandil seeks relief under both the Mandamus Act and the Administrative Procedures Act.

A. Mandamus Act

Pursuant to 28 U.S.C. § 1361, "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." A writ of mandamus "is a 'drastic and extraordinary' remedy 'reserved for really extraordinary cases.'" Cheney v. U.S. Dist. Court, 542 U.S. 367, 380 (2004) (quoting Ex parte Fahey, 332 U.S. 258, 259-60 (1947)). A party requesting a writ of mandamus must satisfy three conditions: the party must have no other adequate means to attain relief; the party's right to issuance of the writ must be clear and indisputable; and the issuing court must be satisfied that the writ is appropriate under the circumstances. See In re United States, 791 F.3d 945, 954-55 (9th Cir. 2015).

Here, Almandil does not have a right to seek mandamus relief. Almandil's Complaint seeks judicial action to compel compliance with certain asylum procedures. Specifically, 8 U.S.C. § 1158(d)(5) provides in part that, "in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed." 8 U.S.C. § 1158(d)(5)(A)(ii).

Section 1158(d)(7) states, however, that "[n]othing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person." 8 U.S.C. § 1158(d)(7). The Ninth Circuit has held that similar statutory language in other sections of the Immigration and

1 Nationality Act expressly precludes mandamus relief. See Campos v. I.N.S., 62
 2 F.3d 311 (9th Cir. 1995) (holding that identical language precluded mandamus
 3 relief under 8 U.S.C. § 1252(i)). The Court sees no reason, and Almandil has not
 4 offered any, as to why the language in § 1158(d)(7) should be read differently.
 5 See also Alaei v. Holder, No. 15cv8906-ODW, 2016 WL 3024103, at *2 (C.D.
 6 Cal. May 26, 2016) (holding that the plaintiff was not entitled to mandamus relief
 7 pursuant to § 1158(d)(7)); Pesantez v. Johnson, No. 15 Civ. 1155 (BMC), 2015
 8 WL 5475655, at *2 (E.D.N.Y. Sept. 17, 2015) (same).

9 For these reasons, the Court concludes that Almandil is not entitled to
 10 mandamus relief.

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12 **B. Administrative Procedures Act**

13 Although the Court concludes that relief is unavailable under the
 14 Mandamus Act, Almandil may still bring an action against an agency under the
 15 Administrative Procedures Act (“APA”).

16 The Administrative Procedures Act provides, in part, that a “reviewing court
 17 shall compel agency action unlawfully withheld or unreasonably delayed.” 5
 18 U.S.C. § 706(1). However, a reviewing court can only compel agency action “if
 19 there is ‘a specific, unequivocal command’ placed on the agency to take a
 20 ‘discrete agency action,’ and the agency has failed to take that action.” Vietnam
 21 Veterans of Am. v. Cent. Intelligence Agency, 811 F.3d 1068, 1075 (9th Cir.
 22 2016) (quoting Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 63-64
 23 (2004)). “The agency action must be pursuant to a legal obligation ‘so clearly set
 24 forth that it could traditionally have been enforced through a writ of mandamus.’”
 25 Vietnam Veterans, 811 F.3d at 1075-76 (quoting Hells Canyon Pres. Council v.
 26 U.S. Forest Serv., 593 F.3d 923, 932 (9th Cir. 2010)).

27 Here, Almandil alleges that the seven month delay in processing his
 28 asylum application is unreasonable and requests that the Court compel agency

1 action. Specifically, Almandil notes that in the time his application has been
 2 pending, “the DHS has examined thousands of other applicants on their asylum
 3 applications and adjudicated those applications.” (Compl. ¶ 9.) Defendants argue
 4 that the delay in this case is not unreasonable given the backlog of applications
 5 currently pending before the agency.

6 Courts are instructed to apply the so-called “TRAC factors” when
 7 determining whether an agency’s delay is reasonable. The TRAC factors include:

8 (1) the time agencies take to make decisions must be governed by a
 9 ‘rule of reason’; (2) where Congress has provided a timetable or other
 10 indication of the speed with which it expects the agency to proceed in
 11 the enabling statute, that statutory scheme may supply content for
 12 this rule of reason; (3) delays that might be reasonable in the sphere
 13 of economic regulation are less tolerable when human health and
 14 welfare are at stake; (4) the court should consider the effect of
 15 expediting delayed action on agency activities of a higher or
 16 competing priority; (5) the court should also take into account the
 17 nature and extent of the interests prejudiced by the delay; and (6) the
 18 court need not ‘find any impropriety lurking behind agency lassitude
 19 in order to hold that agency action is unreasonable delayed.

16 Independence Mining Co. v. Babbitt, 105 F.3d 502, 507 n.7 (9th Cir. 1997)
 17 (quoting Telecomm. Research and Action Ctr. v. FCC, 750 F.2d 70, 80 (D.C. Cir.
 18 1984)).

19 The first and second factor slightly favor Almandil. Congress has specified
 20 that the initial interview should commence within 45 days, and final adjudication
 21 shall be completed within 180 days.” See 8 U.S.C. § 1158(d)(5)(A)(ii)-(iii).
 22 However, even though Almandil’s application has been pending for over a year,
 23 other courts have found similar and longer administrative processing delays to be
 24 reasonable. See, e.g., Alaei, 2016 WL 3024103 (finding one and one-half year
 25 delay reasonable); Pesantez, 2015 WL 5475655 (finding a one year-delay
 26 reasonable); Singh v. Napolitano, 909 F. Supp. 2d 1164 (E.D. Cal. 2012) (finding
 27 a four-year delay reasonable). Thus, these factors only slightly favor Almandil.
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1 The third and fifth factors favor Defendants. Almandil has not alleged any
 2 specific harm he sustained or continues to sustain as a result of the Defendants'
 3 failure to adjudicate his application. Almandil only makes the bare allegation that
 4 "Plaintiff has been greatly damaged" (Compl. ¶ 13.) As Defendants note,
 5 Almandil is not in danger of deportation while his asylum application is pending.
 6 Moreover, Almandil may apply for work authorization given that his application
 7 has been pending for more than 180 days. See 8 U.S.C. § 1158(d)(2).

8 Under the fourth factor, the D.C. Circuit has stated that a judicial order
 9 compelling agency action is improper when "putting [an individual] at the head of
 10 the queue would simply move all others back one space and produce no net
 11 gain." Mashpee Wampanoag Tribal Council, Inc. v. Norton, 336 F.3d 1094, 1100
 12 (D.C. Cir. 2003) (quoting In re Barr Laboratories, Inc., 930 F.3d 72, 75 (D.C. Cir.
 13 1991)). Defendants indicate in their opposition that the agency adjudicates
 14 affirmative asylum application in the order in which they were received, starting
 15 with the oldest first. As above, Almandil makes only the bare allegation that
 16 "similar cases have been completed expeditiously." (Compl. ¶ 10). Almandil does
 17 not specifically allege that applications filed concurrent or more recently than his
 18 application have been adjudicated. This factor also favors Defendants.

19 Considered together, the TRAC factors favor Defendants.¹

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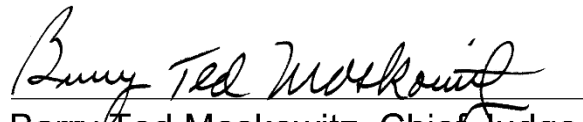
27 ¹ Defendants also argue that the timing provision in § 1158(d)(5)(A)(ii) is not an unequivocal command because
 28 the statute does not specify a consequence should the agency fail to comply with the provision. Because the
 Court concludes that the delay is not unreasonable, the Court need not address this argument.

III. CONCLUSION

For these reasons, Almandil has not alleged facts sufficient to claim that Defendants' delay in adjudicating his asylum application is unreasonable. Defendants' motion to dismiss is **GRANTED** and Almandil's claims are **DISMISSED without prejudice**. Almandil shall have 15 days from the filing of this order to file an amended complaint.

IT IS SO ORDERED.

Dated: July 18, 2016


Barry Ted Moskowitz, Chief Judge
United States District Court